

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:22-cv-24075-KMW

CARLOS BRITO,

Plaintiff,

vs.

FLAMINGO EAST LTD, D/B/A FLAMINGO
PLAZA, WINN-DIXIE STORES, INC D/B/A
FRESCO Y MAS #0242 and ISABEL
RESTAURANT INC D/B/A FLAMINGO,

Defendant.

/

**SECOND AMENDED JOINT MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENTS**

Plaintiff, Carlos Brito (“Brito”), and Defendant, Flamingo East Ltd. d/b/a Flamingo Plaza (“Flamingo”) (Brito and Flamingo are hereinafter collectively referred to as the “Parties”), by and through their respective undersigned counsel and pursuant to the Court’s instructions in its Orders dated June 8, 2023 [Doc. 34] and May 12, 2023 [Doc. 28], hereby move for the Court’s approval of the attached settlement agreements, and state as follows:

1. Brito filed this action (hereinafter, the “Action”), alleging, inter alia, that there are architectural barriers existing within the shopping center which is known as “Flamingo Plaza” the street addresses for which are 901 E 10th Ave, Hialeah, Florida 33010, 1201 East 10th Ave., Hialeah, Florida 33010, 1100 -1110 East 13th Street, Hialeah, Florida 33010 and 1253 E 10th Ave, Hialeah, Florida 33010 (hereinafter, the “Plaza”) and certain the tenant spaces that constitute violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §12181 et seq. (hereinafter, the “ADA”).

2. Flamingo denies these allegations.

3. Notwithstanding, the matters raised by Brito’s Complaint related to the subject Plaza and those certain tenant spaces have been resolved in accordance with the settlement

agreements entitled *Settlement Agreement* and *Confidential¹ Stipulation For Settlement Of Plaintiffs' Attorneys' Fees, Litigation Expenses and Costs* (collectively, the "Settlement Agreements") attached hereto as **Exhibits "1" and "2."** Together, the Settlement Agreements set forth the full and complete terms of the parties' settlement of the claims and defenses between and among them.

4. The Parties submit that the attached Settlement Agreements are fundamentally fair, adequate and reasonable to improve and complete access for persons with disabilities at the property at issue, and otherwise meets the purposes of the ADA with respect to the Plaza.

5. Moreover, the modifications required in the Settlement Agreements are the only readily achievable modifications to the Plaza required under the ADA, and that the Plaza will be ADA compliant under completion of the modifications required in the Settlement Agreements.

6. In accordance therewith, the Parties respectfully request that the Court review, approve and ratify the Settlement Agreements. Additionally, the Parties request the Court retain jurisdiction to enforce the terms of the Settlement Agreements. *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1280 (11th Cir. 2012).

5. As part of the Settlement Agreements, Brito has agreed to dismiss this Action as against Flamingo, with prejudice. Accordingly, the Parties request, upon the Court's review, approval and ratification of the Settlement Agreements, and that the Action as against Flamingo be dismissed, with prejudice.

6. Accept as otherwise stated in the Settlement Agreements, Brito and Flamingo are to bear their own fees and costs.

WHEREFORE, the parties respectfully request that the Court grant this Motion; enter an order (a) approving the attached Settlement Agreements, (b) dismissing the instant action as against Flamingo, with prejudice, and (c) retaining jurisdiction for a period of twenty-four (24)

¹ The Parties expressly acknowledge and agree to the filing of the *Confidential Stipulation For Settlement Of Plaintiffs' Attorneys' Fees, Litigation Expenses and Costs* notwithstanding the confidentiality provision stated therein in light of the Court's Orders [Doc. 28 and 34] requiring the same.

months to enforce the Settlement Agreements; and grant such additional relief as the Court deems just and proper.

Dated: June 9, 2023.

Respectfully submitted,

By: /s/ Anthony J. Perez
ANTHONY J. PEREZ
Florida Bar No.: 535451
GARCIA-MENOCAL & PEREZ, P.L.
350 Sevilla Avenue, Suite 200
Coral Gables, FL 33134
Telephone: (305) 553-3464
Primary Email: ajperez@lawgmp.com
Secondary Email: bvirues@lawgmp.com;
dramos@lawgmp.com
Attorneys for Plaintiff

s/ Ricardo A. Reyes
Ricardo A. Reyes, FBN 864056
Carrie Stolzer Robinson, FBN 0354030
TOBIN, REYES, ALVAREZ & DEBIASE,
PLLC
Attorneys for Defendant Flamingo East Ltd.
225 N. E. Mizner Blvd., Suite 510
Boca Raton, FL 33432
Phone: (561) 620-0656
Fax: (561) 620-0657
eservice@tobinreyes.com
rar@tobinreyes.com
csrobinson@tobinreyes.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on June 9, 2023, we electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,

s/ Ricardo A. Reyes
Ricardo A. Reyes, FBN 864056
TOBIN, REYES, ALVAREZ &
DEBIASE, PLLC